No. 3047

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United States
Circuit Court of Appeals
For the Ninth Circuit.

ALBERT J. GALEN,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Brief of Defendant in Error

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STATE PUBLISHING CO., HELENA, MONT.

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BRIEF OF DEFENDANT IN ERROR.

The statement of the case of Plaintiff in error, though comprehensive, cannot fully apprise this Court of the scope and purpose of the proceeding in the lower court, and we desist from any attempt to elaborate on said statement, as we know the record will be most thoroughly scrutinized on this writ of error, not only as to the pleadings, but also as to the proof on which the lower court based its judgment.

It is to be borne in mind throughout this case and in reviewing the action of the lower court, that this is a case wherein precedent is not as abundant as could be wished. It is sought herein

by plaintiff in error to secure a reversal of the judgment of contempt and thereby a vindication of his conduct, and defendant in error merely seeks not vindication for its trial judge, nor any other object than a clear definition of what, under circumstances as those disclosed by the record herein, constitutes an obstruction of the due administration of justice so near to the presence of the court as to constitute a contempt of court. This and nothing more is sought.

Upon reading the opinion of the lower court herein (Trans. pp. 284-304) we approach the task of replying to the brief of plaintiff in error with a feeling of our inability to improve on the discussion contained in said opinion. The formidable array of counsel for plaintiff in error first led us to believe that in their brief was to be found conclusive reasoning plainly pointing out the manifest error complained of by plaintiff in error—but read that brief as we can, we fail to find anything of a nature that even hints at error, let alone disclose it, when a thought of the lower court's decision is had.

The lower court has held that actions such as those indulged in by Galen are not to be countenanced in modern days.

He is charged with having knowingly visited and conversed during adjournments of court with certain jurors trying a case in which he appeared as an attorney for certain defendants with a view of improperly influencing such jurors. (Tr. p. 5.)

If there is proof sufficient to show the visits and conversations, the intent may be found, as a man is presumed to intend the natural consequence of his acts.

> "If a man intentionally adopts a certain conduct in certain circumstances known to him, and that conduct is forbidden by the law under those circumstances, he intentionally breaks the law in the only sense in which the law ever considers intent."
>
> Ellis v. U. S., 206 U. S. 257.

The question whether a contempt has or has not been committed does not depend on the intention of the party but on the act done.

> Merrimac v. Clay Center, 219 U. S. 527;
> Wartman v. Wartman, Fed. Cases 17, 210;
> Atlantic G. P. Co. v. Dittmar, 9 Fed. 316;
> In re Doolittle 23 Fed. 544;
> Economist F. Co. v. Wrought Iron R. Co., 86 Fed. 424;
> U. S. Southern &c. Assn., 207 Fed. 434.

Any reply that may be attempted in this case to the brief we have been furnished with by plaintiff in error must, of necessity, be merely a segregation of isolated portions of the testimony herein picked out by us to overcome the effect of the quotations made by plaintiff in error. To arrive at a correct conclusion one must look to the entire record and not isolated parts of it.

The authorities as above shown are unanimous in holding that the intent with which a party does a thing is immaterial on a contempt charge if the court finds the acts have been done. Such a find-

ing by the court, if based on competent evidence, will not be disturbed on appeal.

Schwartz v. U. S., 217 Fed. 866.

For a complete discussion of what constitutes a contempt so near the presence of the court as to constitute an obstruction of the due administration of justice see:

Re Independent Pub. Co., 240 Fed. 849.

The entire argument of plaintiff in error is directed wholly to the sufficiency of the evidence and we submit that there is ample evidence in the record to sustain the finding of the lower court that plaintiff in error was guilty of a contempt by his conduct and the judgment appealed from should be sustained.

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